

ENTERED

April 14, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**JANELL ELIZABETH HAMPTON,
(Inmate # 03020688)

Plaintiff,

vs.

ALLSTATE INSURANCE CO.,

Defendant.

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CIVIL ACTION NO. H-23-682

**ORDER DISMISSING COMPLAINT WITHOUT
PREJUDICE AND WITH LEAVE TO AMEND**

Janell Elizabeth Hampton is a pretrial detainee in the Harris County Jail. Representing herself and proceeding without prepaying the filing fee, she filed a complaint against Allstate Insurance Company, alleging that Allstate mishandled her May 2020 claim for vandalism damages to her house and denied most of her claim. (Docket Entry No. 1). As relief, she asks the court to order Allstate to pay the claim for repairs and damages and to cover unspecified losses. (*Id.* at 4).

Because Hampton is proceeding without prepaying the filing fee, the court must screen her complaint as soon as possible after docketing. *See* 28 U.S.C. § 1915(e)(2); *see also* 42 U.S.C. § 1997e(c) (providing for screening of suits by prisoners under § 1983). After this review, the court may dismiss the complaint or any part of it if the action is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2); *see also Neitzke v. Williams*, 490 U.S. 319, 324 (1989); *Harper v. Showers*, 174 F.3d 716, 718 (5th Cir. 1999). A complaint fails to state a claim upon which relief may be granted when the facts show that “the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief.” *Miller v. Stanmore*, 636 F.2d 986, 992 (5th Cir. Unit A 1981); *Adolph v. Fed. Emer. Mgmt. Agency*

of the U.S., 854 F.2d 732, 735 (5th Cir. 1988) (a claim fails to state a claim upon which relief may be granted when “the allegations, accepted as true, do not present a claim upon which relief legally may be obtained”).

Hampton filed her complaint on the form intended for use by prisoners filing a civil rights action under 42 U.S.C. § 1983. Section 1983 “was designed to provide a remedy for violations of statutory and constitutional rights.” *Lafleur v. Texas Dep’t of Health*, 126 F.3d 758, 759 (5th Cir. 1997) (per curiam); see also *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). To state a valid claim under § 1983, a plaintiff must (1) allege a violation of rights secured by the Constitution or laws of the United States, and (2) demonstrate that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Gomez v Galman*, 18 F.4th 769, 775 (5th Cir. 2021) (per curiam). Only persons acting on behalf of the state can act “under color of state law.” See *Frazier v. Bd. of Tr. of Nw. Miss. Reg’l Med. Ctr.*, 765 F.2d 1278, 1283 (5th Cir. 1985). Claims against a private party generally do not state a claim under § 1983.¹ See *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 940 (1982) (a complaint challenging only private action does not state a cause of action under § 1983); *Cornish v. Corr. Servs. Corp.*, 402 F.3d 545, 549 (5th Cir. 2005) (“‘[P]rivate conduct, no matter how discriminatory or wrongful’ is excluded from § 1983’s reach.” (quoting *Richard v. Hoechst Celanese Chem. Grp., Inc.*, 335 F.3d 345, 352 (5th Cir. 2003))).

Hampton does not allege that Allstate violated any federal statutory or constitutional right. Even if she did, Allstate is a private party that was not acting on behalf of the state when handling

¹Limited exceptions to this general rule exist when the plaintiff can show that the private actor was implementing an official government policy or when the private actor’s actions are fairly attributable to the government. See *Rundus v. City of Dallas, Tex.*, 634 F.3d 309, 312 (5th Cir. 2011). A private party who conspires with state actors to deprive another of his constitutional rights may also be considered a state actor. See *Priester v. Lowndes County*, 354 F.3d 414, 421 (5th Cir. 2004). Hampton’s complaint does not allege facts showing that any of these exceptions apply to her case.

Hampton's insurance claim. Hampton's complaint does not state a claim for a civil rights violation.

Even though Hampton has not stated a claim under § 1983, the court must view her complaint liberally rather than holding her to the same pleading standards as lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); *Bledsue v. Johnson*, 188 F.3d 250, 255 (5th Cir. 1999). Viewing Hampton's complaint liberally, the court determines that she may be able to pursue her claim against Allstate in federal court. Federal courts have jurisdiction over civil actions between citizens of different states when the amount in dispute is more than \$75,000. *See* 28 U.S.C. § 1332(a)(1). Hampton's complaint appears to allege that she is a citizen of Texas and that Allstate is a citizen of Illinois. But Hampton does not allege any other facts that would allow the court to determine whether it has jurisdiction over this action. Even under a liberal construction, self-represented litigants "must properly plead sufficient facts that, when liberally construed, state a plausible claim to relief, serve defendants, obey discovery orders, present summary judgment evidence, file a notice of appeal, and brief arguments on appeal." *E.E.O.C. v. Simbaki, Ltd.*, 767 F.3d 475, 484 (5th Cir. 2014) (footnotes omitted).


Based on the above, the court enters the following orders:

1. Hampton's civil rights complaint against Allstate Insurance Company is dismissed without prejudice to Hampton filing her action as a civil action under 28 U.S.C. § 1332(a)(1).
2. If Hampton wants to pursue her claim against Allstate Insurance Company in this action, she must file an amended complaint on the enclosed form for a civil action, (AO Form Pro Se 1), no later than **May 30, 2023**. Hampton must include in her complaint a statement of the facts giving rise to her claim against Allstate, the date Allstate denied all or part of her

claim, the amount of the claim that is disputed, and the address for service of process on Allstate.

3. If Hampton's amended complaint states a claim within the jurisdiction of this court, the court will arrange for service of process on Allstate Insurance Company. *See* 28 U.S.C. § 1915(d).
4. Once service of process is obtained on Allstate Insurance Company, the court will issue a scheduling order to control the remainder of the proceedings in this action.

SIGNED on April 13, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", with a stylized flourish at the end.

Lee H. Rosenthal
United States District Judge

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____ Division

) Case No. _____

) (to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

) Jury Trial: (check one) ☐ Yes ☐ No_____
Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

Defendant No. 2

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

Defendant No. 3

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

Defendant No. 4

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

☐

Federal question

☐

Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* _____, is a citizen of the
State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated
under the laws of the State of *(name)* _____,
and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* _____, is a citizen of
the State of *(name)* _____. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

Or is incorporated under the laws of *(foreign nation)* _____, and has its principal place of business in *(name)* _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____

Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____